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EXAMINER

PEARSE, ADEPEJU OMOLOLA

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim recites “using equipment and process available to those familiar with the art of aerosol processing” The specification does not describe such equipments to provide one with ordinary level skill in the art to practice the invention.
3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 provides for the use of “equipment and processes available to those familiar with the art of aerosol processing”, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 1 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e.,

Art Unit: 1761

results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

4. Regarding claim 1, the phrase "like" in lines 3 and 5 renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Staackmann et al (US. Pat. No. 3,519,440). Staackmann et al disclose a method for producing an aerosol topping comprising forming an emulsion containing water, non-fat milk solids (see table 1), stabilizers including hydrocolloids (col 4 lines 27-31), and a protein such as whey powder (see col 5). The emulsion is filled into an aerosol can pressurized with a propellant including nitrous oxide (col 4 lines 45-56). Applicant admits that a seal with a valve for dispensing is well known. It is inherent that the method disclosed would be capable of converting more than 90% of the emulsion and foam more quickly because it discloses a similar method. In addition it is inherent that the emulsion would be capable of being warmed, converted more than 90% as instantly claimed because it comprises similar components.

Art Unit: 1761

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Verbeek et al (EP 1099384). Verbeek et al disclose a method for producing milk foam comprising a liquid composition containing milk, proteins including whey protein concentrate (0013) and stabilizers including hydrocolloids (0023). An aerosol can with an expanding agent is utilized to dispense the milk foam, the preferred agent being nitrous oxide (0020). The can utilizes a valve for dispensing the milk foam (0017). Applicant admits that a seal with a valve for dispensing is well known. It is inherent that the method disclosed would be capable of converting more than 90% of the emulsion and foam more quickly because it discloses a similar method. In addition it is inherent that the emulsion would be capable of being warmed, converted more than 90% as instantly claimed because it comprises similar components.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

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